IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

Crl.MC.No. 689 of 2007()

CC.2047/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER: ACCUSED

SASIDHARAN PILLAI, S/O. DAMODARAN
PILLAI, MAMPUZHA MELATHIL, MAMPUZHA,
ALUMMOODU P.O., KOLLAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
KUNDARA POLICE STATION, KOLLAM DISTRICT,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. SRI. JOYKUTTY, S/O. MARIYAN,
JOBSON NIVAS, VELLIMON, CHERUMOODUCHERRY,
PERINAD VILLAGE, KOLLAM.

3. SAM KUMAR, S/O. SEBASTIAN,
CHARUVILA VEEDU, NEAR ALIND, KACHERIMUKU,
KANJIRAMCODECHERRY, MULAVANA VILLAGE, KOLLAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.689 of 2007

Dated this the 14th day of March, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 332 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police after due investigation. The petitioner has come to this Court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner. The offence is admittedly not compoundable under Section 320 I.P.C. How then can the composition be accepted and the proceedings quashed ? The learned counsel for the petitioner submits that it is only the ego clash between the complainant and the accused, which led to the filing of the complaint before the police. The complainant does not want to prosecute the prosecution. In these circumstances, it is prayed that composition may be accepted and the proceedings may be quashed invoking the powers under Section 482 Cr.P.C.

2. The powers under Section 482 Cr.P.C are to be invoked to meet extraordinary situations. Section 482 Cr.P.C saves the extraordinary inherent powers of this Court to do justice in an appropriate case. The offence is not compoundable and in such a prosecution the fact that the complainant would turn hostile and that he has compounded the offence is no valid reason to quash the proceedings. The counsel relies on the decision in **B.S.Joshy v. State**

of Haryana [A.I.R (2003) S.C 1386]. That decision, it has been repeated many times, does not obliterate the distinction between compoundable and non compoundable offences under the Code of Criminal Procedure. When law declares an offence to be non compoundable, compelling reasons must be shown to exist to invoke the powers, if any, to quash the proceedings in a prosecution relating to a non compoundable offence. In **B.S.Joshy** (supra), the Supreme Court was dealing with a totally different situation, where the spouses had settled their disputes and the continuation of the prosecution for the non compoundable offence under Section 498 A I.P.C was reckoned as an unnecessary irritant in the matrimonial dispute between the spouses. The extraordinary situation available in that case persuaded the Supreme Court to observe that powers under Section 482 Cr.P.C can be invoked in an appropriate case in the interests of justice and that Section 320 Cr.P.C cannot fetter those powers. I find absolutely no such compelling reasons in the instant case. I am satisfied that the petitioner must resort to the ordinary and regular procedure of claiming acquittal/discharge from the court below by raising appropriate contentions. I find no reason to invoke such powers in this case.

3. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-